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OFFICE OF PETITIONS

In re Patent No. 7,660,822 : DECISION ON
Karl Pfleger : REQUEST FOR
Issue Date: February 9, 2010 : RECONSIDERATION OF
Application No. 10/813,229 : PATENT TERM ADJUSTMENT
Filed: March 31, 2004 : and
Atty Docket No. 0026-0073 : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on April 7, 2010 which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand seventy (1070) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **one thousand sixty-nine (1069) days**.

The period of patent term adjustment is the sum of the period of delay under 35 U.S.C. §154(b)(1)(A) ("A Delay") and the period of delay under 35 U.S.C. §154(b)(1)(B) ("B Delay") reduced by the number of days of overlap between A Delay and B Delay and reduced by the period of delay under 35 U.S.C. §154(b)(2)(C) ("Applicant Delay").

The period of A Delay (478 days) is not in dispute.

The petition asserts the period of B Delay is 772 days; however, the period of B Delay begins on April 1, 2007 and ends the day before the filing of the RCE, which is May 10, 2009. Therefore, the correct B Delay is 771 days (not 772).

The petition asserts Applicant Delay is 180 days, rather than 262 days, as calculated by the Office. Applicant impliedly disputes a reduction of 82 days in connection with a "miscellaneous incoming letter." A review of the document at issue reveals that it is a power of attorney/change of correspondence address. The submission of certain papers after a "Notice of Allowance" is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application. A Power of Attorney is **not** grounds for a 37 CFR 1.704(c)(10) reduction. See *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed*, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001). Therefore, the correct amount of Applicant Delay is 180 days. The reduction of 82 days is being removed from the patent term adjustment record.

With respect to the period of adjustment for the Office taking in excess of three years to issue the patent, 35 U.S.C. §154(b)(2)(A) limits Office delay to the sum of A Delay and B Delay to the extent such periods of delay are not overlapping. Since none of the A Delay overlaps with any of the B Delay, there is no overlapping period.

The proper patent term adjustment is **1069 days** which is the sum of 478 days of A Delay and 771 days of B delay reduced by 180 days of Applicant delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The \$200.00 fee set forth in 37 CFR 1.18(e) will be charged to patentee's deposit account.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand sixty-nine (1069) days.**

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.

Shirene W. Brantley
Shirene W. Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,660,822 B1

DATED : **February 9, 2010**

DRAFT

INVENTOR(S) : Pfleger

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 510 days

Delete the phrase "by 510 days" and insert – by 1069 days--